

# Western task force forms to respond to eminent domain controversy

Dan Berman, *E&E Daily* reporter

The Congressional Western Caucus has formed a new task force meant to defend private property rights in light of a controversial June Supreme Court decision on eminent domain, as members continue to propose legislation to lessen the effects of the ruling.

Rep. Butch Otter (Idaho) will chair the all-GOP panel, leading Reps. Chris Cannon (Utah), Jeff Flake (Ariz.), Barbara Cubin (Wyo.), Henry Bonilla (Texas), Joel Hefley (Colo.), Cathy McMorris (Wash.), Steve Pearce (N.M.), Jim Gibbons (Nev.), Wally Herger (Calif.) and Denny Rehberg (Mont.).

The Supreme Court's 5-4 [decision](#) in the *Kelo v. City of New London* case allowed expanded use of eminent domain by cities and the taking of private property for "just compensation" as long as the land in question will be for public use. The ruling opens the use of eminent domain for private development projects such as building a shopping center or a stadium.

Cody Stewart, executive director of the Western Caucus, said part of the purpose of the task force is to unify support on the eminent domain issue, given that over half a dozen bills have been introduced since last month.

"I think we're all agreed something needs to be done, but we don't want everyone running around in their own direction," Stewart said.

As for timing, Stewart said Congress should take advantage of the decision to act before the August recess. "I think the time is right," Stewart said. "People are still thinking about this, there's still a lot of interest in the mainstream press. We want to use the momentum of the *Kelo* decision."

But attorney David Parkhurst of the National League of Cities, which supports the Supreme Court decision, urged Congress to take its time with any legislation and investigate the issue further. The organization has also started a major lobbying effort to educate members and staff on the benefits to cities of eminent domain and private economic development.

"It's a much more intertwined and connected issue than property rights advocates would lead the public to believe, and Congress needs to untangle what the implications are," Parkhurst said. "We've gone office to office and explained what eminent domain means for cities," he added.

"But for having the authority for eminent domain many of those great projects members of Congress attend back in their districts wouldn't exist -- those ribbon cuttings wouldn't happen under those bills."

## Legislative options

"Legislation on this is being introduced almost daily, not just in Congress but in state legislatures," said Bert Gall, attorney with the Institute for Justice, the nonprofit, libertarian law firm representing Susette Kelo and other New London, Conn., property owners in the case. Most notably, Judiciary Committee Chairman James Sensenbrenner (R-Wis.) has introduced legislation ([H.R. 3135](#)) that would bar federal funds from going toward a locality or state to pay for any projects that would take property. Sen. John Cornyn (R-Texas) has introduced a similar bill ([S. 1313](#)), which would clarify that the power of eminent domain should be available only

for public use and specify that economic development does not count as a "public use" ([\*E&E Daily\*](#), July 1).

The Institute does not have a favored bill at this point. "We're taking a very ecumenical approach," Gall said. "Anything that Congress can do to discourage these takings from happening is welcome.

"Legislation that is going to be effective is going to be legislation that says the use of eminent domain for private development is prohibited," Gall said. "The momentum for this is not going away anytime soon. People are outraged about this decision and the people that introduced these bills are going to follow through."

Another one of the new bills introduced is from Rep. Phil Gingrey (R-Ga.), who earlier sponsored a resolution opposing the Supreme Court decision the House passed overwhelmingly last month, and last week introduced a bill that would give citizens whose homes or land is taken via eminent domain some relief.

[\*\*H.R. 3268\*\*](#) would exempt those citizens from paying capital gains taxes on the proceeds if the government buys their property.

"Eminent domain abuse on its own is intolerable," Gingrey said in a statement. "But taxing those who lose their property to governments and contractors is even more deplorable. There is no excuse for doubly penalizing people by making them pay capital gains taxes on something they didn't want to sell in the first place."

Gingrey spokesperson Becky Ruby said the capital gains tax bill is just one method the congressman supports to limit the effects of the Supreme Court ruling. "They're looking to attack it from every angle possible." Ruby said. "As they say, throw the spaghetti against the wall and see what sticks."